Filed 6/9/15 In re M.D. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re M.D., A Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. M.D., Defendant and Appellant.	B257133 (Los Angeles County Super. Ct. No. VJ43706)

APPEAL from an order of the Superior Court of Los Angeles County, Kevin Brown, Judge. Affirmed.

Bruce G. Finebaum, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Jason C. Tran and Stephanie C. Santoro, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant M.D. contends the juvenile court erred and violated his due process rights when it completed his adjudication hearing in his absence after he unaccountably failed to appear for more than two weeks. Finding no error, we affirm.

BACKGROUND

On August 15, 2013, the District Attorney of Los Angeles County filed a petition under section 602 of the Welfare and Institutions Code charging appellant with one felony count of possession of a controlled substance (methamphetamine, Health & Safety Code, § 11377, subd. (a)) and one infraction count of possession of less than 28.5 grams of marijuana. (Health and Safety Code, § 11357, subd. (b).)

The adjudication hearing began on May 1, 2014. Los Angeles County Sheriff's Deputy Thomas Simpson testified that on August 13, 2013 at 6:46 p.m., he was observing the intersection of Leland and Sundance Avenues in Whittier, an area known for narcotic sales. He observed two young Hispanic males. One was walking a bicycle. The other, wearing a gray shirt and blue jeans, struck up a short conversation with an older male. There was hand-to-hand contact. The entire interaction took only a few seconds. Deputy Simpson radioed a description of the two boys to a nearby patrol car.

Within minutes, Deputy Daniel Rosales and his partner Deputy Matthew Gomez saw appellant and his companion walking on Leland Avenue. Appellant was wearing a gray shirt and blue jeans. His companion had a bicycle. As the patrol car approached the pair, Deputy Rosales saw appellant make a motion toward his right pants pocket, pull something out, and discard it. When the deputies approached the boys after ordering them to stop, appellant was nervous and fidgety, and smelled strongly of marijuana. Deputy Rosales searched appellant

and found 2.23 grams of marijuana in his pocket. A few feet away, the deputy recovered a small baggie containing a white substance, later confirmed to be .06 gram of methamphetamine.[1] Appellant and his companion were taken into custody.[2]

The defense called appellant's companion, Daniel Diaz, who testified that the day they were taken into custody, he and appellant were on their way to the park to smoke marijuana and had no plans to use methamphetamine. He denied seeing appellant take anything out of his pocket and discard it when the deputies approached, but admitted being more focused on the deputies than on what appellant was doing. When the deputies picked up the baggie, appellant and Diaz denied it was theirs.

The defense also called Jesus Perez who had filed a complaint against Deputy Rosales's partner, Deputy Gomez, in July 2013. Perez testified that while Deputy Rosales waited in the patrol car, Deputy Gomez pulled Perez out of his car, searched him and his vehicle without consent, and gave him a "bogus" ticket for being parked too far from the curb.

Just before the end of the first day of the adjudication hearing, defense counsel informed the court that appellant wished to take the stand in his own defense. As there were only three minutes until adjournment, the court ordered everyone to return the next day at 9:00 a.m. Appellant did not appear on May 2 and a bench warrant issued. By May 20, appellant had not been located. At a hearing on that date, the court ruled that appellant had voluntarily absented himself from the proceedings, and that the adjudication hearing would continue in his

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[1] A Sheriff's Department criminalist testified concerning the identification of the substances and the weight of each.

[2] Appellant was 17 at the time of the incident and 18 at the time of the adjudication hearing.

absence. The court specifically found that appellant had waived his right to appear, and that his decision was "conscious," "knowing," and "voluntary." The court stated that its findings were based on "reasonable inference[s]" from appellant's age; his presence on the day of the witnesses' testimony, on several prior court dates, and when the court ordered him to return on May 2; and the absence of any evidence that appellant was involuntarily absent or incapacitated. The next day, May 21, counsel made closing arguments and the court rendered its determination, sustaining the allegations of the petition after finding them true beyond a reasonable doubt.[3]

On June 5, appellant was brought before the court, having been picked up on the warrant. His counsel asked to re-open the proceeding, but provided no explanation or excuse for appellant's absence. The court denied the request. On June 19, the court ordered appellant placed home on probation and terminated jurisdiction. This appeal followed.

DISCUSSION

Appellant's sole contention on appeal is that the juvenile court violated his right to due process by completing the adjudication hearing in his absence and without having heard his testimony. We disagree.

Under Welfare and Institutions Code section 679, a minor who is the subject of a juvenile court hearing is entitled to be present at such hearing. "It does not follow, however, that a jurisdiction hearing which was begun in the juvenile's presence cannot continue when he or she voluntarily absents himself or herself." (*In re Sidney M*. (1984) 162 Cal.App.3d 39, 48 (*Sidney M.*).) "[I]t is . . . settled beyond question that a minor may be capable of knowingly and intelligently

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[3] Defense counsel conceded the truth of the marijuana charge.

waiving his or her rights [citations], including the right to a jurisdiction hearing. [Citations.]" (*Ibid*.) "Accordingly, . . . a minor who is the subject of a juvenile court hearing and who has a right, under Welfare and Institutions Code section 679, to be present at that hearing, may properly be found to have waived that right if the juvenile court finds a knowing and intelligent waiver, considering the minor's age and other relevant circumstances, including intelligence, education, experience, and ability to comprehend the meaning and effect of his or her acts." (*Ibid*.) "Welfare and Institutions Code section 679 simply requires that the state not do anything that would preclude the minor from being present and . . . if the minor is voluntarily absent, thereafter he or she cannot complain of the situation thus created; the minor cannot take advantage of his or her own wrong and stop the hearing simply by walking out." (*Id*. at pp. 48-49.)

Applying the rule to the facts before it, the court in *Sidney M*. found a knowing and intelligent waiver because the minor was 16, "within the normal range of intelligence and education," had "extensive experience with the juvenile court system," and "clearly understood that he had a right to be present throughout the jurisdiction hearing as well as what the consequences of that hearing might be." (*Sidney M., supra*, 162 Cal.App.3d at p. 49.)

Here, the record reflects that appellant was an adult, 18 years old at the time he absconded. He was employed. He had no mental disabilities. He spoke English. He was earning mostly passing grades and occasional A's in school. He had made several court appearances prior to May 2. Significantly, the hearing was drawing to a close, leading appellant to the point at which he would be obliged to face the consequences of his actions. The court reasonably concluded that appellant knew what he was doing when he voluntarily absented himself at such a critical point in the proceedings. Nothing that occurred thereafter cast doubt on the court's finding. Appellant appeared on June 5 only because he had been taken into

custody on the warrant. His counsel moved to reopen, but provided no explanation for appellant's absence.

Appellant contends *Sidney M.* is distinguishable because the juvenile there waived his right to testify after his reappearance. (*Sidney M., supra,* 162 Cal.App.3d at p. 46.) The court in *Sidney M.* gave as an alternate ground for affirmance the lack of prejudice "even if a violation of the minor's right to be present occurred," observing that "no crucial witness" had testified in the juvenile's absence, and that the juvenile had waived his right to reopen the proceedings and testify in his own behalf after his return. The court's statement provided an alternative ground for affirmance, but did not detract from its primary holding that no error occurred in conducting the hearing in the juvenile's absence under facts very similar to those present here.

Appellant suggests the court acted prematurely, as he had been absent only 18 days when the court decided to go forward with the hearing. The deputy district attorney who presented the People's case had informed the court on May 20 that she would be gone on another assignment in less than two weeks, and the court noted that three Sheriff's Department employees had taken time off their regular duties to testify at the hearing. The court was reasonably concerned about the loss of personnel with knowledge of the case, and the waste of judicial resources should the matter have to be retried. The court did not act prematurely in finding that appellant had waived his right to be present and going forward with the adjudication hearing in his absence.

DISPOSITION

The judgment is affirmed.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

COLLINS, J.